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OFFICE OF THE GENERAL COUNSEL

M E M O R A N D U M

TO: Chief, Dockets Branch

FROM: Associate General Counsel, Litigation Division

SUBJECT: Time Warner Entertainment Company, L.P. v. FCC & USA,  
No. 93-1723 and Falcon Holding Group, L.P. v. FCC & USA,  
No. 93-1730. Filing of two new Petitions for Review in the United States Court of Appeals for the District of Columbia Circuit.

DATE: November 9, 1993

Docket No(s). MM 92-266

File No(s)

This is to advise you that on October 29, 1993, Time Warner Entertainment Company, L.P. and on November 1, 1993, Falcon Holding Group, L.P., filed with the United States Court of Appeals for the District of Columbia Circuit a:

X Section 402(a) Petition for Review  
     Section 402(b) Notice of Appeal

of the following FCC decision: Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 - Rate Regulation, 8 FCC Rcd 5631, recon. granted in part and denied in part, FCC 93-428, released August 27, 1993. Petitioners petition the Court to vacate and set aside the cable rules that regulate the rates that the vast majority of cable television operators may charge their subscribers for basic service, cable programming service and equipment.

Due to a change in the Communications Act, it will not be necessary to notify the parties of this filing.

The Court has docketed these cases as Nos. 93-1723 and 93-1730, and the attorney assigned to handle the litigation of these cases is Laurence N. Bourne.



Daniel M. Armstrong

cc: General Counsel  
Office of Public Affairs  
Shepard's Citations

RECEIVED

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IN THE  
UNITED STATES COURT OF APPEALS  
DISTRICT OF COLUMBIA CIRCUIT

OFFICE OF GENERAL COUNSEL

TIME WARNER ENTERTAINMENT  
COMPANY, L.P.,

Petitioner,

-against-

FEDERAL COMMUNICATIONS COMMISSION  
and UNITED STATES OF AMERICA,

Respondents.

93-1723

No. 93-\_\_\_\_\_

United States Court of Appeals  
For the District of Columbia Circuit

FILED OCT 29 1993

RON GARVIN  
CLERK

PETITION OF  
TIME WARNER ENTERTAINMENT COMPANY, L.P.,  
FOR REVIEW OF AGENCY ACTION

Time Warner Entertainment Company, L.P. ("TWE"), pursuant to 47 U.S.C. § 402(a), Chapter 158 of Title 28 of the United States Code, 5 U.S.C. § 706, and Fed. R. App. P. 15, hereby petitions this Court for review of the decision of the Federal Communications Commission ("FCC") in Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation (MM Docket 92-266), FCC 93-177, 58 Fed. Reg. 29,736 (May 21, 1993) ("the May 1993 Rates Order"), and the Commission's First Order on Reconsideration of the May 1993 Rates Order, Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation (MM

Docket 92-266), FCC 93-428, 58 Fed. Reg. 46,718 (Sept. 2, 1993) (the "First Order on Reconsideration"). True copies of these orders are attached hereto as Exhibits A and B.

#### Venue

Venue in this Court is proper under 28 U.S.C. § 2343.

#### Petitioner

TWE, a Delaware limited partnership in which Time Warner Inc., a publicly traded Delaware corporation, indirectly holds a majority interest, is comprised principally of three unincorporated divisions: Time Warner Cable, which is the second largest operator of cable-television systems in the United States, operating systems in approximately 1,600 franchise areas throughout the Nation; Home Box Office, which owns and operates pay-television programming services, including the Home Box Office Service and Cinemax; and Warner Bros., which produces and distributes motion pictures and television programs.

#### Background

The May 1993 Rates Order promulgated a comprehensive scheme of regulation of prices for cable-television services and equipment, purportedly to implement (inter alia) § 3 of the Cable Television Consumer Protection

and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992) (the "1992 Cable Act"). Pursuant to other FCC orders, TWE and others have been required to comply with the various regulations promulgated in the May 1993 Rates Order since September 1, 1993.

The First Order on Reconsideration addresses some of the issues raised in the fifty or more petitions for reconsideration filed with respect to the May 1993 Rates Order. Although the First Order on Reconsideration reserves certain issues for reconsideration in a subsequent order or orders, it finally disposes of numerous crucial issues and reaffirms the obligation of TWE and others to comply with an extraordinarily complex and burdensome regulatory regime beginning on September 1, 1993. The issues posed by the matters finally resolved in the May 1993 Rates Order and the First Order on Reconsideration are ripe for review and are separate and discrete from those matters remaining before the FCC on petitions for reconsideration.

Petitioner's Standing and  
Grounds on Which Relief Is Sought

Petitioner participated in the FCC proceedings giving rise to the May 1993 Rates Order and the First Order on Reconsideration, and is directly and materially affected by the challenged regulations. Petitioner is aggrieved and

injured by those orders, and the regulations they promulgate, amend, and affirm, for reasons that include but are not limited to the following:

1. The May 1993 Rates Order, the First Order on Reconsideration, and the regulations they promulgate, amend, and affirm violate the Free Speech rights of TWE and others and are otherwise in violation of the rights of TWE and others under the First Amendment to the United States Constitution.

2. The May 1993 Rates Order, the First Order on Reconsideration, and the regulations they promulgate, amend, and affirm effect a taking of the property of TWE and others without just compensation and are otherwise in violation of the rights of TWE and others under the Fifth Amendment to the United States Constitution.

3. The May 1993 Rates Order, the First Order on Reconsideration, and the regulations they promulgate, amend, and affirm exceed the statutory jurisdiction and authority of the FCC.

4. The May 1993 Rates Order, the First Order on Reconsideration, and the regulations they promulgate, amend, and affirm are contrary to the language and intent of the 1992 Cable Act and are arbitrary, capricious, abusive of discretion, and are otherwise unlawful.

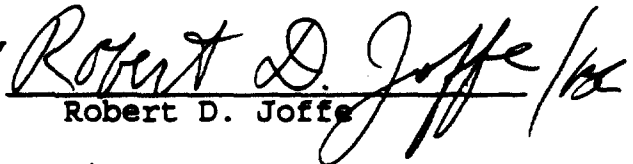
Relief Requested

TWE respectfully requests that the Court vacate and set aside the May 1993 Rates Order and the First Order on Reconsideration, and that the Court grant such other and further relief as may be proper and just in the circumstances.

Respectfully submitted,

CRAVATH, SWAINE & MOORE,

by

  
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Attorneys for Petitioner Time  
Warner Entertainment  
Company, L.P.

October 29, 1993

United States Court of Appeals  
IN THE UNITED STATES COURT OF APPEALS For the District of Columbia Circuit  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

FILED NOV 01 1993

RON GARVIN  
CLERK

93-1730

Falcon Holding Group, L.P.

Petitioner,

v.

Federal Communications Commission  
and the United States of America,

Respondents.

Case No. \_\_\_\_\_

**PETITION FOR REVIEW**

Falcon Holding Group, L.P. ("Falcon") hereby petitions this Court for Review of the First Order on Reconsideration, Second Report and Order, and Third Notice of Proposed Rulemaking, FCC 93-428, 58 Fed. Reg. 4718, adopted August 27, 1993 and published September 2, 1993 (the "First Order"). This Petition is filed pursuant to provisions of 47 U.S.C. § 402(a), 28 U.S.C. § 2342(1) and 28 U.S.C. § 2344. Venue is proper in this Circuit under provisions of 28 U.S.C. § 2343.

Falcon, an owner and operator of cable television systems throughout the United States, asks this Court to vacate certain portions of the Commission's First Order and the Commission's associated Rate Order and Further Notice of Proposed Rulemaking MM Docket No. 92-266, 58 Fed. Reg. 29736 (the Order being reconsidered in the First Order) as being arbitrary and capricious and contrary to law. Those portions to be vacated are: (1) the Commission's guidelines for calculating actual cost

of equipment and installation charges for completing Part III of FCC Form 393 that permit standard corporations to include income tax liability as a recoverable cost but do not permit the same recovery of income taxes by partnerships, sole proprietorships and Subchapter S corporations;<sup>1</sup> (2) the Commission's refusal to allow increases in external costs to be recovered if they are incurred between September 30, 1992 and the date a cable system is notified that it is subject to rate regulation, or 180 days from the effective date of the Commission's rules on rate regulation, whichever comes first.<sup>2</sup>

The effect of both these decisions is to limit unfairly cable operators' ability to obtain rate relief for income taxes solely on the basis of whether or not they are taxable corporations and to force cable operators to absorb external cost increases (over which, by definition, they have no control) if they happen to have taken place between September 30, 1992 and March 1, 1994. Falcon, having chosen to organize its cable television business using primarily a structure of partnerships and having incurred external cost increases after September 30, 1992, is injured by the Commission's decision. Falcon and its related entities were participants in the original rulemaking and

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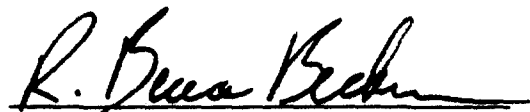
<sup>1</sup>See First Order at ¶¶ 57 - 59.

<sup>2</sup>See First Order at ¶¶ 116 - 118.



in the comments that resulted in the First Order, for which  
judicial review is sought.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "R. Bruce Beckner", is written over a horizontal line.

Arthur H. Harding  
R. Bruce Beckner  
Jill Kleppe McClelland

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Attorneys for Petitioner  
Falcon Holding Group, L.P.

Dated: November 1, 1993

DN: 11073.1